

16 NCAC 06G .0308 DUE PROCESS PROTECTIONS FOR EMPLOYEES OF LOW PERFORMING SCHOOLS

(a) At any hearing conducted by a panel of the SBE pursuant to the provisions of G.S. 115C-325(q) and G.S. 115C-325.11, the panel shall sit as an impartial tribunal to receive evidence and to decide based on a preponderance of that evidence whether the principal, assistant principal, teacher, supervisor, or director, or superintendent (hereafter referred to as "the employee") shall be reinstated, demoted, or dismissed. The assistance team assigned to the school or district where the employee was assigned shall present the case against the employee with the assistance of any staff or legal counsel appointed by the SBE.

(b) Both the employee and the assistance team shall have the right:

- (1) to be represented by counsel at the hearing;
- (2) to subpoena witnesses and documents;
- (3) to examine and cross-examine witnesses under oath; and
- (4) to present relevant evidence using witnesses and documents.

(c) The panel of the SBE which conducts the hearing shall:

- (1) give written notice to the parties of the time and place of the hearing;
- (2) make a complete record of the evidence received during the hearing; and
- (3) issue subpoenas for witnesses and documents on behalf of any party to the proceedings; and
- (4) any procedural decisions.

(d) In any hearing pursuant to the provisions of G.S. 115C-325(q), and 115C-325.11 the assistance team shall have the burden of proof but, in accordance with G.S 115C-325(q) or 115C-325.11, the findings and recommendations of the assistance team shall be substantial evidence of the inadequate performance of the employee.

(e) The panel's decision shall contain:

- (1) findings of fact;
- (2) conclusions of law;
- (3) a description of any disciplinary actions to be imposed on the employee; and
- (4) a statement that the employee may file a notice of appeal to the full SBE within 10 days of receipt of decision by mailing the notice to the State Board of Education's Office of General Counsel, 301 S. Wilmington Street, Raleigh, N.C. 27601, and emailing a copy of the notice of appeal to Office of General for the State Board of Education.

(f) An appeal from the SBE panel's decision to the full SBE shall be on the record. In accordance with a schedule set by the SBE, the employee may submit a written brief of no more than 8,750 words. The assistance team may file a response of no more than 8,750 words within seven business days after service of the employee's brief. Word counts shall conform to Rule 28(j) of the North Carolina Rules of Appellate Procedure and parties shall certify their word counts on the last page of any brief. The SBE may consider the appeal at any regularly scheduled meeting that is at least 20 days after receipt of notice of the appeal and shall render a decision within 30 days after that meeting is adjourned, unless the SBE determines that good cause, as defined by 26 NCAC 03 .0118, exists to extend those periods or the SBE and all the parties agree to extend any period. The members of the panel that decided the case may fully participate in the appeal. The full SBE shall decide the appeal based upon a preponderance of the evidence in the record. The SBE's decision shall include findings of fact, conclusions of law, and a description of any disciplinary actions to be imposed on the employee. Appeal from the SBE decision shall be in accordance with Chapter 150B of the General Statutes.

(g) Before the SBE revokes a superintendent's license or terminates the contract of a superintendent pursuant to G.S. 115C-105.39(c)(2), the SBE shall provide the superintendent with notice of how the superintendent has failed to cooperate with the assistance team or has otherwise hindered the school's ability to improve. The superintendent shall have ten days to deliver a written response to the charges. If the SBE decides to revoke the superintendent's license or terminate the superintendent's contract, the SBE shall make written findings to support those actions. The SBE's decision shall constitute a final agency action subject to review under Chapter 150B of the General Statutes.

(h) If the SBE revokes or refuses to renew a teacher's license pursuant to G.S. 115C-296(d), the procedures set forth in 16 NCAC 6C .0312 shall apply.

(i) Any requests, notices, or correspondence from the SBE or parties required or permitted under this Rule shall be served on the SBE and any other party in the manner prescribed in G.S. 1A-1, Rule 5 of the North Carolina Rules of Civil Procedure.

History Note: Authority G.S. 115C-12(9)c4.; 115C 325(q); 115C-325.11; 115C-105.39(b); and 115C-105.39(c)
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